

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 136 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ASHOK DEVJI SONДАРВА

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR DN PATEL, APP for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 18/07/97

ORAL JUDGEMENT

1. The petitioner, an externee under the impugned order dated 30/9/1996 (Annexure : B) passed by Respondent No. 1, has preferred this petition challenging the said order as well as the Appellate order dated 5/12/1996 (Annexure : C) passed by respondent No.2 on number of grounds, inter alia, on the ground appearing in Grounds (e) and (f) of the petition.

2. The said grounds speak about inordinate delay in passing the order of externment in the context of two registered offences of 1995 referred to in the externment proceedings and in the context of show cause notice dated 1/6/1996.

3. Rule was made returnable on 20/2/1997. The matter has come up for hearing today. No Affidavit in Reply has been filed by the respondents. The externnee has completed most of the period of his externment. In order to substantiate the aforesaid grounds which contain within it the facts with regard to delay, reliance has been placed upon a decision of this Court dated 10/12/1996 in the case between Sitaben M. Thakore V/s. Commissioner of Police in Special Criminal Application No. 63 of 1996 (Coram : N.N.Mathur, J.), which in turn has referred to a Division Bench decision in Special Civil Application No. 1295/1994 decided on 24/1/1995 (Coram : K.J. Vaidhya and S.D. Dave, JJ.). It has been submitted from the aforesaid decisions that the order of externment has been passed after long lapse of time which has snapped the live link in between the past acts committed by the concerned petitioner and the order of externment impugned by him.

4. In reply, it has been submitted that delay has occasioned not on account of the fault of the concerned authority, but on account of either the fault of the complainant or on account of the fault of the externnee inasmuch as evidence could not be recorded in time on account of such fault. This explanation of delay would run counter to the idea behind the concept of externment as envisaged by section 56 of the Bombay Police Act, according to which a man is to be sent out, who is engaged in the anti-social activities in a particular area so as to release the people from the said person of his illegal activities by destroying the established net-work of the evil elements in that particular locality. This Court in the aforesaid decision observed that whosoever might be responsible for passage of time, the very purpose of the exercise of powers u/S. 58 is frustrated if the same are not exercised within a 'reasonable period', because the grounds which existed for externment would require immediate action and such grounds cannot be said to have continued for a long period.

In the result, in view of what is stated above and in the facts of the case, this Special Criminal Application is required to be allowed. The impugned

order of externment dated 30/9/1996 and the order of confirmation passed in Appeal by the Appellate Authority on 5/12/1996 are hereby quashed and set aside. Rule made absolute accordingly.

* * *